

Supreme Court, U.S.

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No.

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

EUGENE EMMANUEL, PETITIONER

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL UNION No. 25

*PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is it consistent with Due Process, Fundamental Fairness, and Federal Rule of Civil Procedure 56 for the District Court to revisit *sua sponte* its order denying the defendant's motion for summary judgment five months after the fact and enter an order the week before the start of a jury trial granting the same motion for summary judgment without providing any notice to the plaintiff that the court was reconsidering the motion and without allowing the plaintiff any opportunity to respond or to present evidence before the entry of the revised ruling granting summary judgment?

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STATUTES

28 U.S.C. § 1254(1)..... *passim*

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OPINIONS BELOW

The unpublished decision of the United States Court of Appeals for the First Circuit in *Emmanuel v. Int'l Brotherhood of Teamsters, Local Union No. 25*, 04-1830 (November 4, 2005), denying Appellant's Petition for Panel Rehearing, is set forth in the Appendix hereto (App. 41a).

The decision of the United States Court of Appeals for the First Circuit in *Emmanuel v. Int'l Brotherhood of Teamsters, Local Union No. 25*, 426 F.3d 416 (1st Cir. 2005), affirming the district court's decision granting summary judgment in favor of the defendant, is set forth in the Appendix hereto (App. 1a-12a).

The unpublished order of the district court of April 15, 2004, in *Emmanuel v. Int'l Brotherhood of Teamsters, Local Union No. 25*, No. 1:01-cv-12194-JLT (4/15/04), reconsidering its November 17, 2003, order denying the defendant's motion for summary judgment, and granting defendant's same motion for summary judgment, is set forth in the Appendix hereto (App. 40a).

The unpublished memorandum of the district court of May 20, 2004, in *Emmanuel v. Int'l Brotherhood of Teamsters, Local Union No. 25*, No. 1:01-cv-12194-JLT (5/20/04), explaining its April 15, 2004, decision granting the defendant's previously-denied motion for summary judgment, is set forth in the Appendix hereto (App. 13a-39a).

JURISDICTION

The judgment of the United States Court of Appeals for the First Circuit denying Appellant's Petition for Panel Rehearing was entered on November 4, 2005.

This petition for writ of certiorari by Petitioner is filed within ninety (90) days of that date. 28 U.S.C. § 2101(c).

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

United States Constitution, Amendment V

No person shall . . . be deprived of life, liberty, or property without due process of law

Fed. R. Civ. P. 56(c)

(c) Motion and Proceedings Thereon.

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A

summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

STATEMENT

In 1999, Eugene Emmanuel began working for Laidlaw, Inc., as a school bus driver in West Roxbury, Massachusetts. App. 2a. On June 14, 2000, Laidlaw asked Emmanuel to drive a bus from its West Roxbury facility to a facility in a neighboring town. *Id.* When Emmanuel entered the bus, he could not find the pre-trip inspection log, but he recorded his safety observations on the back of his time sheet. *Id.* Here, he noted that the brake was "was set up a little higher than it was supposed to be," but he did not consider this a safety problem. *Id.* As he pulled out of the West Roxbury facility, the bus accelerated out of control and the brakes failed. Emmanuel steered the bus off the road and crashed through several bushes and a fence before stopping in a ditch. *Id.*

Emmanuel stated that the accident was the result of defects in the bus's accelerator and brake system. *Id.* Laidlaw's investigation concluded that the brakes had been serviced recently and were in working order. *Id.* After reviewing the results of their own investigation, as well as the police report and Emmanuel's statement, Laidlaw determined that Emmanuel was at fault and that the accident was "serious in nature." *Id.* at 2a-3a. The collective bargaining agreement (CBA) permitted Laidlaw to fire an employee without warning for involvement in a

"serious at-fault accident." *Id.* at 3a. On August 23, 2000, Laidlaw discharged Emmanuel. *Id.*

Emmanuel filed a grievance with his union, the International Brotherhood of Teamsters, Local Union No. 25 (the Union), claiming that the discharge was unjust and requesting reinstatement with back pay. *Id.* The Union business agent, Ritchie Reardon, represented Emmanuel in the grievance proceedings. *Id.* Prior to arbitration, Emmanuel met with Reardon to discuss strategy. Emmanuel urged Reardon to argue that the accident was caused by mechanical defects in the bus. *Id.*

Reardon's investigation of the mechanical defects was confined to his interviewing several Laidlaw mechanics who were admittedly "hostile" to Emmanuel's claim because Emmanuel had been in other accidents which he stated had been caused by mechanical defects, statements which the mechanics had taken "personally." *Id.* at 3a-4a. Predictably then, the mechanics told Reardon that the brakes and accelerating system were not defective and Reardon rightly decided not to call them as witnesses. *Id.* at 4a.

Instead of conducting any further investigation into the mechanical defects of the bus, however, Reardon dropped the issue entirely and presented an argument before the arbitrator wholly unrelated to the question of the cause of the bus accident and Emmanuel's liability, if any. *Id.* Reardon chose to focus at the arbitration on the fact that the CBA required Laidlaw to impose discipline on an employee within 20 days of the date that the company learned of the accident. *Id.* Because Laidlaw did not inform

Emmanuel of his discharge until 70 days after the accident, the Union argued that Emmanuel's discharge violated the CBA. *Id.* Not surprisingly, the arbitrator rejected this argument and concluded that Emmanuel's discharge was justified under the CBA. *Id.*

After losing the arbitration, Emmanuel sued the Union in the district court for violating the duty of fair representation. *Id.* His complaint alleged that the Union inadequately investigated his mechanical defect theory and irrationally decided to present only the timing issue to the arbitrator. *Id.* After discovery, the Union moved for summary judgment on August 26, 2003. *Id.* Emmanuel opposed this motion, and the district court denied the Union's motion in an endorsed order entered on November 17, 2003. App. to First Circuit Brief, 28 (Docket entries of 10/3/03 and 11/17/03). A jury trial was ultimately set for March 22, 2004. The district court granted an assented-to emergency motion by the defendant to continue the trial until April 19, 2004, in order that the defendant could secure the attendance of certain witnesses. *Id.* at 29 (Docket entry of 3/18/04).

On April 14, 2004, a final pretrial hearing was held before the district court, where the parties discussed with the court primarily the issue of settlement and the merits of a motion in limine filed by the defendant with respect to the testimony of a number of Emmanuel's proposed witnesses. *Id.* at 53-77. In explaining to the district court the reasons why the parties were so far apart in their settlement negotiations, counsel for the defendant stated:

But what concerns me, Your Honor, is – and I intend no disrespect to the Court on this – but we briefed the summary judgment issues on this very carefully and our motion was denied. We are not sure exactly why.

But when you begin to look at what is supposed to be in dispute here in terms of what the union did or didn't do that made some outcome different or could have made something different in the arbitration, it just isn't a factual dispute that ought to be presented to the jury, Your Honor.

Id. at 67. Counsel then continued to argue the merits of the defendant's motion in limine concerning the plaintiff's witnesses. *Id.* at 67-68, 72-73. The district court made no reference during the remaining minutes of the pretrial hearing to the defendant's allusion to its previously-filed and previously-denied summary judgment motion. Instead, the court addressed the issue of whether the parties still wanted a jury trial and whether there was any possibility of a last-minute settlement. *Id.* at 68-77. The court concluded the hearing by informing the parties to be ready for trial the following Tuesday. *Id.* at 74-77.

On the following day, the district court entered a one-paragraph order stating that it had reconsidered its November 17, 2003, denial of the defendant's motion for summary judgment. App. 40a. The court stated that it "now concludes that Defendant's conduct was not arbitrary, discriminatory, or exercised in bad faith[,] and granted the defendant's August-filed motion for summary judgment. *Id.*

On April 26, 2004, Emmanuel timely filed a motion for reconsideration in the district court pursuant to Fed. R. Civ. P. 59(e), arguing, among other things, that as a result of the court's *sua sponte* overnight reassessment, he was denied the opportunity to present significant new evidence on the defect issue (and thus on the issue of the Union's derelictions in its duty of representation) that Emmanuel had discovered in the time between the court's November 17, 2003, denial of the defendant's summary judgment motion and its April 15, 2004, order granting the same motion. App. 42a-55a. Emmanuel stated in his motion for reconsideration that in the months following the district court's denial of the defendant's motion for summary judgment, and in the weeks leading up to trial, counsel for Emmanuel discovered that the very bus at issue had been the subject of a prior recall based on a defect in the accelerator – a recall about which, he would argue, the Union should have been aware using reasonable diligence in their duty of representation. *Id.* at 48a-51a. In light of the unfairness thus resulting from the manner in which the district court so suddenly, and without notice, reexamined its denial of summary judgment and entered a new order granting the defendant summary judgment, Emmanuel sought reconsideration under Rule 59(e). *Id.* at 44a.

On May 20, 2004, the district court entered a memorandum order explaining the reasons for its April 15, 2004, order granting the defendant summary judgment. App. 13a-39a. The court focused solely on the substantive issues raised by the defendant's August-filed summary judgment motion. *Id.* at 20a-29a. Notably absent from the court's memorandum order was any discussion or mention of: 1) the *sua*